

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 2482 - SB 2380**

March 4, 2022

**SUMMARY OF BILL:** Requires a market dominant online platform (MDOP) engaged in commerce in this state to furnish the platform services in which the platform is market dominant to information content providers, without discrimination, and upon just and reasonable terms. Requires MDOPs to refrain from content moderation not taken in good faith. Prohibits an MDOP from deplatforming or otherwise categorically denying service to information content providers and adversely treating content on the basis of philosophical, political, ideological, or religious views expressed.

Requires the Tennessee Public Utility Commission (TPUC) to issue annual determinations identifying MDOPs and the platform services in which those platforms are market dominant. Requires TPUC to assess a quarterly platform fee from certain MDOPs. Outlines requirements for the platform fee. Requires MDOP corporations subject to platform fees to complete and file a return for quarterly fee payments, along with the fee payment, to TPUC. Prescribes penalties and fines that TPUC may issue for violations. Provides exemptions to platform fees for MDOPs that foster open discourse, including incorporating into the platform service's terms of service outlined contractual terms.

Establishes the Attorney General and Reporter (AG) has the sole initial authority to bring actions to recover damages on behalf of users. Authorizes a user to bring a private cause of action for an alleged violation and may be awarded various damages, costs, and fees.

Creates a Class E felony offense with a maximum sentence of five years' incarceration and a maximum fine of \$70,000, or both, for a person, including an officer of a corporation, who willfully fails to file a return for quarterly fee payments.

**FISCAL IMPACT:**

**Other Fiscal Impact – The proposed legislation may result in an increase in state fee and fine revenue to Tennessee Public Utilities Commission. However, the exact timing and extent of such increase cannot be reasonably determined. To the extent the Commission is unable to collect sufficient revenue from market dominant online platforms to offset incurred expenditures, a General Fund appropriation is assumed to be necessary.**

Assumptions:

- The proposed legislation requires MDOPs to refrain from content moderation not taken in good faith. The proposed legislation further prohibits a MDOP from deplatforming or otherwise categorically deny service to information content providers within this state.
- Per the language of the legislation:
  - "Deplatform" means an online platform restricting, in whole or in part, covertly or overtly, the ability of an information content provider to post, upload, or publish content, as opposed to the platform taking the action on a case-by-case basis against specific and particular content produced by the information content provider; and
  - "Content moderation not taken in good faith" means:
    - An online platform adversely treating content of an information content provider in this state, or lawful content posted, uploaded, or published by an information content provider in this state, in a manner that is pretextual or inconsistent with the online platform's terms of service; and
    - Includes an online platform selectively applying the platform's terms of service to adversely treat content posted, uploaded, or published by an information content provider in this state that is similarly situated to content that the platform intentionally declines to adversely treat.
- The language of the legislation requires TPUC to assess a MDOP corporation with annual gross revenues attributable to users located in this state of more than \$10,000,000 and that owns or operates an online platform, in addition to taxes, fees, or other charges required by law, a quarterly platform fee on platform services actively used by 10 percent or more of individuals located in this state who are 13 years of age and older. Requires the platform fee be equal to:
  - \$7.50 per quarter per active state user of the corporation's general internet search platform services;
  - \$5.00 per quarter per active state user of the corporation's personal social networking platform services;
  - \$1.50 per quarter per active state user of the corporation's microblogging social networking platform services;
  - \$1.50 per quarter per active state user of the corporation's online video sharing platform services; and
  - \$4.00 per quarter per active state user of the corporation's online photo sharing platform services; and
  - Not exceed 15 percent of the annual gross revenues attributable to users located in this state that the corporation generates through the platform service.
- The extent to which TPUC will be able to collect fee and fine revenue as a direct result of this legislation is unknown. In addition, the extent to which current TPUC reserves can be utilized to fund the expenditures incurred as a direct result of this legislation is unknown.
- For the purposes of this fiscal analysis, it is assumed that the additional expenditures would require a General Fund appropriation if TPUC is unable to collect sufficient fees and fines from MDOPs to offset such expenditures.

- Any additional AG duties resulting from the proposed legislation will be absorbed using existing resources.
- Any private cause of action brought by a user will occur between private parties and, therefore, will have a not significant impact on state and local government.
- There will not be a sufficient number of Class E felony prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- Any additional workload on the courts, as a result of this legislation, can be accommodated within existing resources and personnel.
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.

## **IMPACT TO COMMERCE:**

**Other Commerce Impact – A precise impact to jobs and commerce in Tennessee cannot reasonably be estimated.**

Assumptions:

- The proposed legislation will result in increased expenditures for any MDOP corporation that is required to pay an online platform fee or is fined due to a violation.
- A precise impact to jobs and commerce in Tennessee cannot reasonably be estimated due to multiple unknown variables such as, the number of MDOPs operating in the state, the number of MDOP corporations that will be required to pay a platform service fee to TPUC, the amount of fines a corporation may be charged, the number of private causes of action that may be brought against an MDOP, and any damages that may result of such causes of action.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

/vh